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Measures to eliminate international terrorism

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Report of the Secretary-General

Addendum

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II. Measures taken at the national and international levels regarding the prevention and suppression of international terrorism and information on incidents caused by international terrorism

A. Information received from Member States*

The following paragraphs reproduce information submitted by States.

1. **Cuba** indicated that a plot to assassinate President Fidel Castro, organized by the Miami-based Cuban-American National Foundation, was foiled in Panama on 17 November 2000 as a result of information provided by Cuba. The person implicated in the assassination, the well-known international terrorist Posada Carriles, was currently being held in that country.

2. Cuba stated that Posada Carriles was responsible for the mid-air explosion in 1976, over Barbados, of a passenger aircraft belonging to Cubana de Aviación that caused the death of 73 persons. He had perpetrated terrorist actions against 28 countries.

3. Also detained in Panama were Pedro Remón Rodríguez, a Miami resident with an extensive record of terrorism, who had murdered an official of the Mission of Cuba to the United Nations; Guillermo Novo Sampoll, a United States resident and one of the leaders of Omega 7, a terrorist organization located in the United States, who had fired a bazooka at the United Nations in 1964 and had been implicated in the assassination of Orlando Letelier, former Foreign Minister of Chile, in 1976; and Gaspar Jiménez Escobedo, a Miami resident and one of the main liaisons with the Cuban-American National Foundation, who had participated in the murder of a Cuban official in Mexico, had been detained in 1977 because his terrorist actions against Cuba violated the Neutrality Act of the United States, had attempted to assassinate the Ambassador of Cuba to the United Nations in 1980, and had taken part in numerous plots against the President of Cuba.

4. Some 20 kilograms of C-4 and 50 packets of Semtex had been confiscated from them, along with maps of the University of Panama auditorium and other evidence suggesting that they had been planning to blow it up during a meeting of Fidel Castro with thousands of Panamanian students. They might also have committed actions against other Ibero-American Summit events and seriously endangered the lives of other presidents.

5. Cuba stated that Posada Carriles had been trained by the CIA and, as an employee of that organization, his task had been to unify the most aggressive anti-Cuban mercenary groups. After blowing up the aircraft over Barbados, he had been in prison in Venezuela but had managed to escape on foot; he had re-emerged on the payroll of the CIA and the Department of State as a leader of the so-called Contragate contingent, under the orders of Oliver North. He had later worked for two Central American presidents, planned dozens of terrorist actions against Cuba and attempted to assassinate President Fidel Castro during the Ibero-American Summit in Cartagena and during his visits to the Dominican Republic and Venezuela.

6. Posada Carriles had travelled to the United States on several occasions and, in 1996, he had openly visited Miami. In 1997, he had organized a bombing campaign against Havana hotels, in which an Italian tourist had been killed and many people injured, and he had given interviews from El Salvador to *The New York Times* and to the Miami TeleNoticias channel.

7. In June 1998, *The New York Times* had published extensive information demonstrating that the Cuban-American National Foundation had financed the bombing campaign against Havana hotels, carried out by Chávez Abarca, a Cuban-American resident of New Jersey, with the assistance of Posada Carriles and a number of Central American mercenaries, some of whom had been arrested and punished in Cuba.

8. The Cuban authorities had initiated steps to request the extradition of Posada Carriles and the other terrorists on 18 November 2000. The formal request had been made on 29 November, and the request of the Ministry of Foreign Affairs of Panama for further information regarding the case had been satisfied, within the time limit, on 15 January 2001.

* Information on the participation of States in multilateral agreements relating to the suppression of international terrorism is presented separately in document A/56/160, sect. III.A.

9. Cuba had provided full guarantees of due process to the terrorists and had assured them that the death penalty would not be applied and that they would be sentenced to no more than 20 years in prison. It had also proposed that they should be tried by a Latin American international court in Havana. The Cuban extradition request met all the requirements of the Bustamante Code and of the Constitution and Judicial Code of Panama.

10. Cuba indicated that the Government of the United States had brought immense pressure to bear on Panama to prevent the extradition of the terrorist group. That was not surprising since successive United States administrations had organized, financed and carried out numerous actions against Cuba over the course of several decades, using mercenaries of that kind; because its policy of aggression, subversion and economic warfare against Cuba directly encouraged terrorism against the country; and because it had deliberately permitted the Cuban-American National Foundation, as well as other terrorist organizations that continuously financed, organized, provided supplies for and carried out terrorist actions against Cuba, to exist and to operate in United States territory with open impunity.

11. On 14 May 2001, the Government of Panama had transmitted its formal refusal to grant the extradition requested by Cuba. The Cuban authorities had stated their position regarding that decision in an official note submitted on 30 May 2001 to the Ministry of Foreign Affairs of Panama by the Ministry of Foreign Affairs of Cuba.

12. Cuba stated that it did not want revenge; it merely wanted a just trial and severe punishment for a group of terrorists that had committed countless crimes against the Cuban people during more than three decades.

13. Cuba stated that its position on the issue of terrorism was based on an ethical principle: the unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomever committed. Cuba considered terrorism an unacceptable practice, irrespective of the identity of the victims or the perpetrators.

14. Cuba had participated actively in the actions and efforts undertaken by the United Nations to combat international terrorism. Although it recognized that the results of such efforts had sometimes been sectoral in nature or limited in scope, it supported them in the firm conviction that the contribution of the United Nations and the international community as a whole was a matter of priority and urgency.

15. Cuba recognized the importance and necessity of strengthening the existing legal regime for dealing with international terrorism. However, effective international cooperation in combating international terrorism could not be promoted in the absence of a clear definition of that offence.

16. Accordingly, in the ongoing international negotiations on the issue, Cuba, along with other third world members of the Movement of Non-Aligned Countries, had given top priority to the need for a clear and precise definition of the crime of international terrorism. As had been the case in recent years, the absence of such a definition would lead to the recurrence of politically motivated interpretations and the selective application of the instruments adopted previously in that area.

17. Cuba also believed that consideration should be given to a series of elements that formed an integral part of the fight against terrorism in all its forms and manifestations, such as efforts to combat the financing of international terrorism and the prohibition on the use of the territory of a State for the organization of terrorist acts against another State or for training the perpetrators of such acts.

18. As early as 1937, even before the United Nations was established, Cuba was one of the signatories of the Convention for the Prevention and Punishment of Terrorism, which reaffirmed the principle of international law, by virtue of which it was the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to prevent the acts in which such activities took shape.

19. In 1984, Cuba was among the 117 nations that voted in favour of General Assembly resolution 39/159, entitled "Inadmissibility of the policy of State terrorism and any actions by States aimed at undermining the socio-political system in other sovereign States".

20. In line with that tradition, Cuba had continued to insist, in international forums, that State terrorism and terrorist acts encouraged or condoned by States should

be condemned unequivocally, in the context of the condemnation of all terrorist acts, methods and practices in all their forms and manifestations, wherever and by whomever committed. Activities of a State aimed at destabilizing another State by sponsoring and providing training, financing, resources and protection, whether within or outside its territory, to terrorist elements so that they could perpetrate acts against another State must also be specifically defined and condemned.

21. Cuba considered that "individual responsibility" in the commission of terrorist acts and activities was not always separate from "State responsibility", since, in most cases, terrorist elements needed support, financing and protection from their State of origin or residence or from another State by virtue of other relations.

22. Likewise, Cuba found unacceptable the idea that the activities of a State's armed forces that were not governed by international humanitarian law should be excluded from the scope of application of a future convention on the subject. That in extenso and tendentious interpretation of the scope of international humanitarian law was intended to validate new strategic doctrines and to use humanitarian pretexts to justify State terrorism, interference and aggression.

23. Cuba believed that international terrorism was a form of criminal conduct applicable to the conduct of States. The thesis that sought to validate certain acts or conduct of States by associating them with other rules of international law, such as those concerning the use of force in conformity with Article 2, paragraph 4, and Article 39 of the Charter of the United Nations, was an interpretation that was flawed from the outset, legally aberrant and politically motivated. The inherent right to legitimate self-defence, which was recognized in the Charter and in the system of international law, could not be invoked to justify acts of terrorism committed by one State against another.

24. As a member of the Movement of Non-Aligned Countries, Cuba supported the proposal to convene an international conference on the terrorism for the purpose of promoting efforts to define that international crime clearly and precisely, instead of continuing to develop a sectoral treatment of or approach to the subject. Cuba also supported the legitimate demand, by a representative group of developing countries, that an international convention on the subject should clearly reflect the necessary differentiation between terrorism and the efforts of peoples to combat foreign occupation.

25. As the host country of the 105th Inter-Parliamentary Conference, held in April 2001, and convinced of the importance of the contribution that the world's parliaments could make to the struggle against international terrorism, Cuba promoted the adoption of a resolution endorsing General Assembly resolution 55/158, which contained an important call to States, international organizations and the international community as a whole to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities.

26. With respect to the interrelationship between a future convention and existing international treaties in the area of terrorism, Cuba considered that there should be no contradiction. On the contrary, it would be useful and timely to adopt a general convention that would fill the gaps in the existing legal framework while reinforcing the progress achieved in the codification process.

27. In legal and formal terms, the duplication, in the new legal text, of some provisions of existing treaties would not pose a problem. However, in the interest of greater legal precision and certainty, the future convention could include a provision clarifying its relationship to existing sectoral treaties. The relationship should be based on the principle that the general convention should strengthen, complement and complete the existing legal framework.

28. In addition, Cuba stated that its domestic legislation was clear on the issue. Terrorism, which was characterized in the case law and positive law of Cuba as a "counter-revolutionary offence", was an imported phenomenon, since from the time of the triumph of the revolution, the United States had imposed on Cuba both State terrorism exercised officially by that country and acts of aggression, which Cuba had faced for more than four decades, perpetrated from North American territory using mercenary forces of Cuban origin recruited from the Cuban community abroad.

29. From the very triumph of the revolution, Cuban legislators had to confront the phenomenon of terrorism, as expressed through the attacks that immediately ensued against Cuba, its interests and its citizens, within and outside the country.

30. Thus, offences already existing within the criminal law in force at the triumph of the revolution were characterized as "counter-revolutionary" and included terrorist activities. They were primarily offences against the property and stability of the nation and against State authority.

31. On 29 October 1959, days after Havana was shelled, the revolutionary tribunals resumed functioning and were assigned to try counter-revolutionary offences. Act 634 of 20 November 1959 stated: "It is clear that counter-revolutionary activities, within and outside the national territory, are hampering the Government's economic and social development plans and making it necessary to re-establish the revolutionary tribunals".

32. On 23 December 1959, Act 664 was promulgated. It already recognized that: "The existence of counter-revolutionary activities carried out from abroad by fugitives from revolutionary justice and in the national territory by persons with illegitimate interests is an obvious fact." The Act confirmed that confiscation of property was applicable as an ancillary measure in connection with counter-revolutionary offences, but also that it was applicable to those who evaded justice by fleeing abroad and to those who conspired against the Revolution from abroad.

33. On 4 January 1961, Act 923 was promulgated. It was designed to strengthen the penalties for counter-revolutionary offences carried out by means of terrorist attacks, arson, attacks against persons and the use of explosives. The increase in terrorist and paramilitary actions at the time made it necessary to enact specific legislation against terrorism within revolutionary law.

34. The Act was not sufficient to confront the criminal nature of the actions sponsored by the United States, such as murder, torture and attacks against civilian objects, which increased and became more criminal. Accordingly, Act 988 was promulgated on 15 November 1961, following the mercenary invasion of Playa Girón and the diabolical actions of the bands of insurgents. The Act declared definitively that United States imperialism was financing and directing counter-revolutionary activities, consisting of acts of sabotage and destruction of natural resources, and it imposed the death penalty as the only punishment for perpetrators of such acts.

35. Thus, the offence defined in paragraph (c) of Act 988 was formulated as follows: "Those who in any way invade the national territory in armed groups to fight against the Revolution shall be subject to the death penalty." Accordingly, the offence applicable to landings of armed individuals was the one defined in Act 988, and the penalty was death. Other paragraphs penalized other types of offences, such as setting fire to sugar cane crops, murder and causing damage to agro-industrial installations. In addition, article 468 penalized attacks against persons or damage to property through the use of explosives or other destructive means causing widespread devastation, and the penalty was death.

36. Article 469 also covered other ways of combating terrorism. The possession of explosives or other substances to be used in sabotage was penalized, and anyone who manufactured, transported or provided such substances or instruments of sabotage to another person without authorization was also liable to punishment. Similar penalties were provided for accomplices, abettors and intellectual authors and co-authors.

37. Terrorism against Cuba, from its first manifestations, was characterized correctly as a counter-revolutionary offence. Accordingly, the severest penalties were applied to it with the aim of preserving the national interests of the Cuban people. Cuban law was consistent with the international norms of respect between States, and Cuba had developed appropriate treatment for terrorism — administering justice with equity and impartiality, preserving individual rights to a defence and acting severely, but in accordance with the procedures provided by law.

38. The Criminal Code was approved by means of Act 62 of 29 December 1987; its sections IV and VI penalized the offences of incitement to war and genocide. In its articles 106, 107, 108 and 109, it provided for and punished offences relating to terrorism.

39. Section VII of chapter II, title I, of the Special Part of the Criminal Code comprised four articles. The bulk of its content was the subject of laws promulgated at the proper time by the revolutionary Government, especially Act 465 of 1959, Act 923 of 1961 and Act 988 of the same year. All of the acts defined in section VII had a specific criminal intent: their purpose was to affect the security of the State. If that purpose did not exist, such acts would become part of other offences having a different legal definition.

40. Since 15 February 1973, Cuba and the United States had maintained an air and vessel anti-hijacking agreement, which was revoked on 17 April 1977 because of its flagrant violation by the United States and the abominable act of terrorism, namely, the mid-air explosion of a Cubana de Aviación aircraft over Barbados on 6 October 1976.

41. In February 1974, Cuba and Canada signed an air and vessel anti-hijacking agreement; in June of that year, similar treaties were concluded with Venezuela and Mexico. In July, Cuba structured a broad bilateral agreement with Colombia on the subject.

42. Cuba stated that the Cuban people had been a victim of terrorism as perhaps no other people had. Cuba was very familiar with international terrorism, since for over 40 years it had been a victim of countless terrorist activities instigated from abroad, which had caused substantial material losses and loss of life and inflicted incalculable suffering on Cuban citizens.

43. Cuba had been a victim for more than four decades of the most ruthless State terrorism aimed at destroying, by creating terror, instability and uncertainty, the social process that the Cuban people had freely adopted in the full exercise of their right to self-determination. In such attempts, the territory of a foreign State had been used systematically and continuously to finance terrorist acts against Cuba, organize terrorist actions and train those who carried them out.

44. It should be noted that all of the terrorist actions against Cuba, including terrorism carried out with bombs, against which a special international legal instrument had been drafted, had a common thread that invariably led to the territory of the United States. Such actions included attempts on the lives of Cuban leaders and the use of biological warfare agents that had affected the Cuban population and economy.

45. Such acts were financed from United States territory by organizations led by persons of Cuban origin who practised violence and terror on a daily basis; terrorist acts against Cuba were organized from there, using mercenaries paid by those organizations, as recognized recently by the Special Rapporteur of the Commission on Human Rights on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination; and they were trained there, as numerous news media had documented on more than one occasion.

46. In addition, Cuba provided information on the multilateral instruments relating to international terrorism of which it was a party[1] and also indicated that the Convention on Offences and Certain Other Acts Committed on Board Aircraft and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation were in the process of constitutional approval.

47. Furthermore, Cuba provided a chronological summary of terrorist acts against Cuba during the period from 1990 to 2000, and a copy of the speech delivered on Cuban television on 20 November 2000 by Felipe Pérez Roque, Minister for Foreign Affairs of the Republic of Cuba, concerning events related to the arrests in Panama of the terrorist Luis Posada Carriles and three other international terrorists.

48. **Poland** provided information on the multilateral instruments relating to international terrorism of which it was a party,[1] as well as the test of those provisions of its 1997 Penal Code that dealt with acts of a terrorist nature.[2] Furthermore, Poland expressed the view that the problem of terrorism was extremely complex. Because of the different forms it assumed and the different messages it carried, it was difficult to formulate a uniform definition of terrorism. The majority of those in academic circles who dealt with the issue of terrorism shared the opinion that terrorism meant the following: the use of or threat to use violence for political purposes; a method of fighting or reaching specific goals based on intimidation of a society and government by causing human casualties and loss of property, characterized by ruthlessness and violation of moral and legal norms. Acts of terrorism were characteristically offences against life and health, common safety and safety of land, water and air traffic, freedom and public order. That enumeration clearly indicated that terrorism was a threat to people's safety, destabilized the public order and violated fundamental human rights, such as the right to freedom and the right to life.

49. Poland observed that the current situation with respect to the threat of terrorism did not warrant extraordinary regulation of an antiterrorist nature. The phenomenon was combated on the basis of the 1997 Penal Code, which made some criminal acts of a terrorist nature punishable.

50 Terrorism was an international phenomenon and posed a threat to the entire international community. That threat had led to the adoption of a number of laws of international significance with a view to prosecuting the perpetrators of terrorist acts.

51. Poland also indicated that offences of a terrorist nature were combated by the State Security Office (UOP). Pursuant to the act of 10 March 1990 on UOP, the duties of the head of UOP included preventing and clearing up espionage and terrorist offences, as well as other offences against the security of the State, and prosecuting their perpetrators. In addition, terrorism in the armed forces was combated by the Military Information Services Act (the act of 21 November 1967 on the common obligation to defend Poland).

52. Within the framework of its operational and investigative activities, in order to prevent and detect terrorist acts, UOP could secretly obtain information and record evidence, using for that purpose newly legalized measures introduced by means of the act of 12 October 1995 (the act amending the so-called police acts in Poland). They included pre-trial bugging, inspecting correspondence, controlled purchase or secretly supervised delivery. The use of those measures undoubtedly violated fundamental human rights and freedoms. On the other hand, public safety and the protection of the public order at times required the use of such methods by State authorities. The use of such measures by UOP was subject to a number of conditions, however. They could be used only in cases explicitly enumerated in the act, and permission to use them must be given by the Prosecutor-General and, in emergency cases, by the head of UOP as well. Such regulations were in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which, in article 8, paragraph 2, stipulated that a public authority could infringe the right to privacy only in accordance with the law and as necessary in a democratic society for the sake of national security, public safety or the economic welfare of the State, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

53. Finally it was stated that the Polish legislation relating to combating terrorism was comprehensive, that Poland was a party to the majority of international conventions on combating terrorism, that its criminal law identified such a category of offences, and that there was a State organ whose tasks included combating and preventing terrorism.

54. **Tunisia** provided information on the multilateral conventions relating to international terrorism that it had signed or ratified.[1] A list of bilateral agreements related to international terrorism and the texts of relevant provisions of its national legislation were also provided.[2]

55. Furthermore, Tunisia indicated that its legislation provided for the punishment of anyone committing a crime that qualified as a terrorist act under article 52 bis of the Penal Code, which was added pursuant to Act No. 112 of 1993.

56. Section 313 of the Code of Penal Procedure, as revised by Act No. 113 of 1993, dated 22 November 1993, drew a distinction between crimes that qualified as terrorist acts and political crimes that gave rise to the right of political asylum.

57. Article 123, paragraph 2, of the Military Procedural and Penal Code dealt with the suppression of the crime of placing oneself at the disposal of a terrorist organization or foreign army operating abroad in time of peace, in accordance with Act No. 23 of 1989, dated 27 February 1989.

V. Publication of a compendium of national laws and regulations regarding the prevention and suppression of international terrorism in all its forms and manifestations

58. As at 23 September 2001, the Secretary-General had also received the texts of laws and regulations from the Governments of Chile, Cuba, Egypt, France, India, Malaysia, Panama, Poland, Singapore and Uzbekistan.

Notes

[1] See A/56/160, section III.A.

[2] Available in the Codification Division of the Office of Legal Affairs.